

R590. Insurance, Administration.

R590-222. Viatical Settlements.

R590-222-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority provided in Subsection 31A-2-201(3), authorizing rules to implement the provisions of Title 31A, and Section 31A-36-119, authorizing rules to implement the provisions of Title 31A, Chapter 36.

R590-222-2. Purpose and Scope.

The purpose of this rule is to implement procedures for licensure of providers and producers of viatical settlements, provider ~~[and producer]~~ annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for viatical settlement payments, and procedures for requests for verification of coverage.

This rule applies to all providers and producers of viatical settlements and to insurers whose policies are being viaticated.

R590-222-3. Incorporation by Reference.

The following appendices are hereby incorporated by reference within this rule and are available at <http://www.insurance.utah.gov/ruleindex.html>:

(1) Appendix A, Utah Provider of Viatical Settlement Application, dated 2003.

(2) Appendix B, Utah Provider of Viatical Settlement Annual Report, dated 200[3]6.

(3) Appendix C, ~~[Utah Producer of Viatical Settlement Annual Report, dated 2003.~~

~~(4) Appendix D,~~ NAIC Viatical Settlement brochure, dated 2002.

(5) Appendix ~~[E]~~D, NAIC Verification of Coverage for Individual Policies, dated 2003.

(6) Appendix ~~[F]~~E, NAIC Verification of Group Life Insurance Benefits, dated 2003.

R590-222-4. Definitions.

In addition to the definitions in Section 31A-1-301 and 31A-36-102, the following definitions apply to this rule:

(1) For purposes of this rule, "insured" means the person covered under the policy being considered for viatication.

(2) "Life expectancy" means the mean number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the provider of viatical settlements considering medical records and appropriate experiential data.

(3) ~~["Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.~~

~~(4)~~ "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

R590-222-5. License Requirements.

(1) Provider of Viatical Settlements License.

(a) A person may not perform, or advertise any service as a provider of viatical settlements in Utah, without a valid license.

(b) A provider of viatical settlements license shall be issued on an annual basis upon:

(i) the submission of a complete initial or renewal application; and

(ii) the payment of the applicable fees under Section 31A-3-103.

(c) An applicant for a license shall:

(i) use the application form prescribed by the commissioner and available on the department's website, see Appendix A;

(ii) provide a copy of the applicant's plan of operation that is to:

(A) describe the market the applicant intends to target;

(B) explain who will produce business for the applicant and how these people will be recruited, trained, and compensated;

(C) estimate the applicant's projected Utah business over the next 5 years;

(D) describe the corporate organizational structure of the applicant, its parent company, and all affiliates;

(E) describe the procedures used by the applicant to insure that viatical settlement proceeds will be sent to the viator within three business days as required by Subsection 31A-36-110 (3); and

(F) describe the procedures used by the applicant to insure that the identity, financial information, and medical information of an insured are not disclosed except as authorized under Section 31A-36-106;

(iii) provide the antifraud plan as required by Section 31A-36-117;

(iv) provide any other information requested by the commissioner; and

(v) provide evidence of financial responsibility in the amount of \$50,000 in the form of a surety bond issued by an authorized corporate surety or a deposit of cash, certificates of deposit or securities or any combination thereof:

(A) The evidence of financial responsibility shall remain in force for as long as the license is active.

(B) The bond, deposit or combination thereof, shall not be terminated without 30 days prior written notice to the licensee and the commissioner.

(C) The commissioner may accept as evidence of financial responsibility, proof that a financial instrument, in accordance with the requirements in subsection 1(c)(v), has been filed with the commissioner of any other state where the provider of viatical settlements is licensed as a provider of viatical settlements.

(d) The commissioner may refuse to issue or renew a license of a provider of viatical settlements if any officer, one who is a holder of more than 10% of the provider's stock, partner, or director fails to meet the standards of Title 31A, Chapter 36.

(e) If a provider of viatical settlements fails to pay the

renewal fee within the time prescribed or fails to submit the reports required in Section R590-222-6, the nonpayment or failure to submit the required reports shall:

- (i) result in lapse of the license; and
- (ii) subject the provider to administrative penalties and forfeitures.

(f) If a provider of viatical settlements has, at the time of license renewal, viatical settlements where the insured has not died, the provider of viatical settlements shall:

- (i) renew or maintain its current license status until the earlier of the following events:

(A) the date the provider of viatical settlements properly assigns, sells, or otherwise transfers the viatical settlements where the insured has not died; or

(B) the date that the last insured covered by viatical settlement transaction has died;

- (ii) designate, in writing, either the provider of viatical settlements that entered into the viatical settlement or the producer who received commission from the viatical settlement, if applicable, or any other provider or producer of viatical settlements licensed in this state, to make all inquiries to the viator, or the viator's designee, regarding health status of the insured or any other matters.

(g) The commissioner shall not issue a license to a nonresident provider of viatical settlements unless a written designation of an agent for service of process is filed and maintained with the commissioner.

(2) Producer of Viatical Settlements license.

~~[(a)]~~ Producers of viatical settlements ~~[will]~~ shall be licensed in accordance with Title 31A, Chapter 23a with a life insurance line of authority.

~~[(b)] If a producer of viatical settlements fails to pay the renewal fee within the time prescribed or fails to submit the reports required in Section R590-222-6, the nonpayment or failure to submit the required reports shall:~~

- ~~— (i) result in lapse of the license; and~~
- ~~— (ii) subject the producer to administrative penalties and forfeitures.]~~

R590-222-6. Annual Reports.

~~[(1)]~~ By March 1 of each calendar year, each provider of viatical settlements licensed in this state shall report to the commissioner all viatical settlement transactions where the viator is a resident of this state. A report is not required if there are no transactions to be reported. This report shall be submitted in the format in Appendix B and contain the following information for the previous calendar year:

(~~[a]~~1) for viatical settlements contracted during the reporting period:

(~~[i]~~a) ~~[date of viatical settlement]~~ a coded identifier for each viatical settlement;

(~~[ii]~~b) ~~[life expectancy of the insured at time of settlement in months]~~ policy issue date;

(~~[iii]~~c) ~~[face amount of policy viaticated]~~ date of the

viatical settlement;

~~(~~[iv]~~d) net death benefit viaticated;~~

~~(~~[v]~~e) [estimated total premiums to keep policy in force for mean life expectancy] amount available under the terms of the policy;~~

~~(~~[vi]~~f) net amount paid to viator;~~

~~[~~(vii)~~ contestable or within suicide period, or both, at the time of viatical settlement; and~~

~~~~(viii)~~ name and address of the producer of the viatical settlement, if any, through whom the reporting provider purchased the policy.~~

~~~~(b)~~ for viatical settlements where death has occurred during the reporting period:~~

~~~~(i)~~ date of viatical settlement;~~

~~~~(ii)~~ life expectancy of the insured at time of settlement in months;~~

~~~~(iii)~~ net death benefit collected;~~

~~~~(iv)~~ total premiums paid to maintain the policy (indicate as dollar amount and provide reason for zero amount, i.e. waiver of premium, paid up policy, etc.);~~

~~~~(v)~~ net amount paid to viator;~~

~~~~(vi)~~ date of death;~~

~~~~(vii)~~ amount of time between date of settlement and date of death in months;~~

~~~~(viii)~~ difference between the number of months that passed between the date of settlement and the date of death and the life expectancy in months as determined by the reporting company; and~~

~~~~(ix)~~ contestable or within suicide period, or both, at the time of viatical settlement.]~~

~~(~~[e]~~2) number of policies reviewed and rejected; and~~

~~(~~[d]~~3) number of policies purchased from an individual or entity other than the original viator as a percentage of total policies purchased.~~

~~[(2) By March 1 of each calendar year, each producer of viatical settlements licensed in this state shall report to the commissioner all viatical settlement transactions where the viator is a resident of this state. This report shall be submitted in the format in Appendix C and contain the following information for the previous calendar year:~~

~~~~(a)~~ date of viatical settlement;~~

~~~~(b)~~ face amount of policy viaticated;~~

~~~~(c)~~ net amount paid to viator;~~

~~~~(d)~~ contestable or within suicide period, or both, at the time of the viatical settlement;~~

~~~~(e)~~ provider's name and address for each transaction.]~~

R590-222-7. Payment Requirements.

(1) Payment of the proceeds of a viatical settlement pursuant to Subsection 31A-36-110(3), shall be by means of wire transfer to an account designated by the viator or by certified check or cashier's check.

(2) Payment of the proceeds to the viator pursuant to a viatical settlement shall be made in a lump sum except where the provider of viatical settlements has purchased an annuity or

similar financial instrument issued by a licensed insurance insurer or bank, or an affiliate of either. Retention of a portion of the proceeds, not disclosed or described in the viatical settlement by the provider of viatical settlements or escrow agent, is not permissible without written consent of the viator.

R590-222-8. Disclosures.

(1) As required by Subsection 31A-36-108(1), the disclosure, which is to be provided no later than the time the application for the viatical settlement, shall be provided in a separate document that is signed by the viator and the provider of viatical settlements or producer of viatical settlements, and shall contain the following information:

(a) There are possible alternatives to a viatical settlement, including any accelerated death benefits or policy loans offered under the viator's life insurance policy.

(b) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

(c) Proceeds of the viatical settlement could be subject to the claims of creditors.

(d) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(e) The viator has the right to terminate a viatical settlement within 15 calendar days after the receipt of the viatical settlement proceeds by the viator as provided by Subsection 31A-36-109(7). If the insured dies during the 15 day period, the settlement is terminated, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the viatical settlement provider or purchaser.

(f) Funds will be sent to the viator within three business days after the provider of viatical settlements has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(g) Entering into a viatical settlement may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.

(h) Disclosure to a viator shall include distribution of a copy of the National Association of Insurance Commissioners (NAIC) Viatical Settlement brochure, dated 2002, that describes the process of viatical settlements, see Appendix [D]C.

(i) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a provider of viatical settlements or producer of viatical settlements about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the provider of

viatical settlements. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(j) The insured may be contacted by either the provider or producer of viatical settlements or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(2) A provider of viatical settlements shall provide the viator with at least the following disclosures no later than the date the viatical settlement is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement or in a separate document signed by the viator and the provider of viatical settlements or producer of viatical settlements, and provide the following information:

(a) State the affiliation, if any, between the provider of viatical settlements and the issuer of the insurance policy to be viaticated.

(b) The document shall include the name, address and telephone number of the provider of viatical settlements.

(c) A producer of viatical settlements shall disclose to a prospective viator the existence and source of the producer's compensation. The term "compensation" includes anything of value paid or given to a producer of viatical settlements for the placement of a policy.

(d) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

(e) State the dollar amount of the current death benefit payable to the provider of viatical settlements under the policy or certificate. If known, the provider of viatical settlements shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the provider of viatical settlements interest in those benefits.

(f) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change.

R590-222-9. Standards for Evaluation of Reasonable Payments.

The provider of viatical settlements is responsible for assuring that the net proceeds from the viatical settlement exceed

the benefits that are available at the time of the viatical settlement under the terms of the policy including cash surrender, long-term care, and accelerated death benefits.

R590-222-10. Requests for Verification of Coverage.

(1) Insurers, authorized to do business in this state, whose policies are being viaticated, shall respond to a request for verification of coverage from a provider of viatical settlements or a producer of viatical settlements within 30 calendar days of the date a request is received, subject to the following conditions:

(a) a current authorization consistent with applicable law, signed by the policyholder or certificate holder, accompanies the request;

(b) in the case of an individual policy, submission of a form substantially similar to the NAIC Verification of Coverage for Individual Policies, dated 2003, which has been completed by the provider of viatical settlements or the producer of viatical settlements in accordance with the instructions on the form, see Appendix [E]D;

(c) in the case of group insurance coverage:

(i) submission of a form substantially similar to the NAIC Verification of Group Life Insurance Benefits dated 2003, which has been completed by the provider of viatical settlements or producer of viatical settlements in accordance with the instructions on the form, see Appendix [F]E; and

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) An insurer whose policy is being viaticated may not charge a fee for responding to a request for information from a provider of viatical settlements or producer of viatical settlements in compliance with this rule in excess of any usual and customary charges to policyholders, certificateholders or insureds for similar services.

(3) The insurer whose policy is being viaticated shall send an acknowledgment of receipt of the request for verification of coverage to the policyholder or certificateholder and, where the policyholder or certificateholder is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit or similar benefit that is available under a provision of or rider to the life insurance contract.

R590-222-11. Advertising.

(1) This section shall apply to advertising of viatical settlements, related products, or services intended for dissemination in this state. Failure to comply with any provision of this section is determined to be a violation of Section 31A-36-112.

(2) The form and content of an advertisement of a viatical settlement shall be sufficiently complete and clear so as to avoid misleading or deceiving the reader, viewer, or listener. It shall not contain false or misleading information, including information

that is false or misleading because it is incomplete.

(3) Information required to be disclosed shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(4) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence.

(5) An advertisement shall not use the name or title of an insurer or an insurance policy unless the affected insurer has approved the advertisement.

(6) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(7) The words "free," "no cost," "without cost," "no additional cost", "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(8) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement licensee makes, as its own, all the statements contained therein, and the statements are subject to all the provisions of this section.

(a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the provider of viatical settlements or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(b) An advertisement shall not state or imply that a viatical settlement benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(c) When an endorsement refers to benefits received under a viatical settlement, all pertinent information shall be retained for a period of five years after its use.

(9) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(10) An advertisement shall not disparage insurers, providers of viatical settlements, producers of viatical settlements, viatical settlement investment agents, anyone who may recommend a viatical settlement, insurance producers, policies, services or methods of marketing.

(11) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement, products or services, and if any specific viatical settlement is advertised, the viatical settlement shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name and administrative office address of the provider of viatical settlements shall be shown on the application.

(12) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement.

(13) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(14) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the provider of viatical settlements or producer of viatical settlements is licensed.

(15) An advertisement shall not create the impression that the provider of viatical settlements, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlements are recommended or endorsed by any government entity.

(16) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other

device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(17) An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

(a) any viatical settlement licensee or its business practices or methods of operations;

(b) the merits, desirability or advisability of any viatical settlement;

(c) any viatical settlement; or

(d) any life insurance policy or life insurance insurer.

(18) If the advertisement emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(19) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

R590-222-12. Reporting of Fraud.

(1) A person engaged in the business of viatical settlements under Title 31A, Chapter 36, that knows or has reasonable cause to believe that any person has violated or will violate any provision of Section 31A-36-113, shall, upon acquiring the knowledge, promptly notify the commissioner and provide the commissioner with a complete and accurate statement of all of the relevant facts and circumstances. Any other person acquiring such knowledge may furnish the information to the commissioner in the same manner. The report is a protected communication and when made without actual malice does not subject the person making the report to any liability whatsoever. The commissioner may suspend, revoke, or refuse to renew the license of any person who fails to comply with this section.

R590-222-13. Prohibited Practices.

(1) A provider of viatical settlements or producer of viatical settlements shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a provider of viatical settlements or producer of viatical settlements is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five business days after receiving notice of the subpoena.

(2) A provider of viatical settlements shall not also act as a producer of viatical settlements in the same viatical settlement, whether entitled to collect a fee directly or

indirectly.

(3) A producer of viatical settlements shall not seek or obtain any compensation from the viator without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement.

(4) A provider of viatical settlements or producer of viatical settlements shall not unfairly discriminate in the making or soliciting of viatical settlements, or discriminate between viators with dependents and without dependents.

(5) A provider of viatical settlements or producer of viatical settlements shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a producer of viatical settlements, with respect to the viatical settlement.

R590-222-14. Filing of Forms.

(1) All forms to be used for a viatical settlement shall be filed with the commissioner prior to use. The department is not required to review each form and does not provide approval for a filing. The forms will be identified as "filed for use" when submitted to the department with all requirements. The forms to be filed include the viatical settlement, disclosure to the viator, notice of intent to viaticate, verification of coverage, and application.

(2) A form filing consists of:

(a) the uniform transmittal form that is available at the department's website at www.insurance.utah.gov/L&AH_Transmittal.pdf. Because the targeted user of the universal transmittal form is an insurer, all information requested on the form may not be applicable to a filing for a viatical settlement; therefore, complete only the areas of the form that will identify and describe your filing. The transmittal form is to be the top document of your filing;

(b) a cover letter on company letterhead that is to properly identify the viatical settlement provider. The cover letter must provide the following:

(i) a list of the forms being filed by title and any number given the document; and

(ii) a description of the reason for the filing. Indicate whether the form is new or replacing a form. If the form is replacing a previously filed form, provide the replaced form number, the date filed in Utah, and the changes being made;

(c) a copy of each form to be filed; and

(d) return materials, if you wish to receive notification that the filing has been filed with the commissioner. Return materials consist of one copy of the cover letter and a self-addressed stamped envelope. The department will not send notice that the filing has been received unless you provide the means to do so.

(3) If a filing has been rejected as incomplete, the response to the rejection must include all items required for the

filing and a copy of the rejection form.

(4) If an Order to Prohibit Use has been issued, the response to the Order must include:

- (a) a resubmission letter identifying the changes made;
- (b) one copy of the revised document; and
- (c) return materials which include a copy of the resubmission letter and a self addressed stamped envelope.

(5) Companies may request the status of their filing by telephone, email or mail after 30 days from the date of submission.

R590-222-15. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

R590-222-16. Severability.

If any provision or clause of this rule or its application to any person or situation is held to be invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, viatical

Date of Enactment or Last Substantive Amendment: [~~June 24, 2003~~]

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-36-119